Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

BERETTA U.S.A. CORP., ET AL.,

Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

BERETTA U.S.A. CORP., ET AL.,

Petitioners,

v.

BRYANT LAWSON, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A District of Columbia statute imposes liability "without regard to fault or proof of defect" on firearms manufacturers and distributors for injuries resulting from the use of a wide range of firearms discharged in the District, even though those firearms may not be manufactured or sold within the District, and even though any such injuries result from the intervening acts of criminals who illegally bring the firearms into the District and use them to cause harm.

The following questions are presented:

1. Whether the District's statute, which has the practical effect of deterring firearms manufacturers from making and selling their lawful products elsewhere in the country, violates the Commerce and Due Process Clauses of the United States Constitution, and contravenes basic principles of federalism.

2. Whether the Commerce Clause's *per se* ban on "direct regulation" of out-of-state commerce is limited to statutes explicitly regulating price or whether it applies to all types of extraterritorial regulation.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The plaintiffs below included the District of Columbia, Bryant Lawson, James Foster-El, Michelle Foster-El, Patrick Mahoney, Laura Wallace, Madilia Marsh-Williams, Gregory Ferguson, Ahmad Vaughan and Avery Blue.

The defendants below included Beretta U.S.A. Corp.; Browning Arms Co.; Century International Arms, Inc.; Colt's Manufacturing Co.; Fabbrica d'Armi Pietro Beretta S.p.A.; Forjas Taurus, S.A.; Glock Ges.m.b.H.; Glock, Inc.; Heckler & Koch, Inc.; Hi-Point Firearms; H&R 1871, Inc.; International Armament Corp. d/b/a Interarms Industries, Inc.; K.B.I., Inc.; Navegar, Inc. d/b/a Intratec; Norinco Sports U.S.A., Inc.; Phoenix Arms; Sigarms, Inc.; Smith & Wesson Corp.; Sturm Ruger & Co.; and Taurus International Manufacturing, Inc.

Pursuant to Supreme Court Rule 29.6, petitioners respectfully state as follows:

Beretta U.S.A. Corp. is majority owned by Beretta Holding S.p.A., and no publicly held company owns 10 percent or more of its shares.

Browning Arms Co. is wholly owned by Browning. No publicly held company owns 10 percent or more of its shares.

Century International Arms, Inc. has no parent corporation and no publicly held company owns 10 percent or more of its shares.

Colt's Manufacturing Co. LLC is wholly owned by New Colt Holding Corp., and no publicly held company owns 10 percent or more of its shares.

Fabbrica d'Armi Pietro Beretta S.p.A. is wholly owned by Beretta Holding S.p.A., and no publicly held company owns 10 percent or more of its shares.

Forjas Taurus, S.A. has no parent corporation and no publicly held company owns 10 percent or more of its shares.

Glock, Inc. has no parent corporation and no publicly held company owns 10 percent or more of its shares.

Heckler & Koch, Inc. is wholly owned by Suhl USA, Inc., which is in turn wholly owned by Suhl Holdings GmbH, a privately-held German corporation.

Hi-Point Firearms (a d/b/a of Beemiller, Inc.) has no parent corporation and no publicly held company owns 10 percent or more of its shares.

H&R 1871, Inc. has no parent corporation and no publicly held company owns 10 percent or more of its shares.

K.B.I., Inc. has no parent corporation and no publicly held company owns 10 percent or more of its shares.

Phoenix Arms has no parent corporation and no publicly held company owns 10 percent or more of its shares.

Sigarms, Inc. has no parent corporation and no publicly held company owns 10 percent or more of its shares.

Smith & Wesson Corp. is a wholly-owned subsidiary of Smith & Wesson Holding Corporation, which has issued shares to the public.

Sturm Ruger & Co. has no parent corporation and no publicly held company owns 10 percent or more of its shares.

Taurus International Manufacturing, Inc. is a wholly owned subsidiary of Taurus Holdings, Inc.

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OPINIONS AND ORDERS BELOW

The Court of Appeals' en banc opinion (Pet. App. 1a) is reported at 872 A.2d 633. The original panel opinion (Pet. App. 51a) is reported at 847 A.2d 1127. The order of the Superior Court (Pet. App. 95a) is not reported, but is available at 2002 WL 31811717.

JURISDICTION

The Court of Appeals filed its en banc opinion on April 21, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) and (b), and *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The District of Columbia's "Assault Weapons Manufacturing Strict Liability Act" provides, in relevant part, that "[a]ny manufacturer, importer, or dealer of an assault weapon or machine gun shall be held strictly liable in tort, without regard to fault or proof of defect, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon or machine gun in the District of Columbia." D.C. Code § 7-2551.02.

The Commerce Clause of the Constitution of the United States, Art. I, § 8, cl. 3, grants Congress the power to "regu-

late Commerce with foreign Nations, and among the several States."

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

This case presents the question whether the District of Columbia may enact a statute with the practical effect of deterring petitioners from manufacturing and selling their lawful, nondefective products throughout the country.

1. The District of Columbia Council enacted the "Assault Weapons Manufacturing Strict Liability Act" (the "Act") effective February 1992. The Act, codified at D.C. Code §§ 7-2551.01 to 7-2551.03, imposes liability "without regard to fault or proof of defect" on firearms manufacturers and distributors for "all direct and consequential damages" arising from the discharge of certain firearms within the District of Columbia. In the words of the Act's sponsor, in introducing the statute's predecessor, "[t]his legislation will lead to far fewer handguns, not only in the district, but *in the nation as a whole*." Memorandum from David Clarke to members of D.C. Council (quoted in Pet. App. 172a (quotation marks and brackets omitted)).

The Act applies to "assault weapons" and "machine guns," but defines those terms to encompass virtually all semi-automatic firearms. *See* D.C. Code § 7-2551.01(1) (defining "assault weapon" to include certain enumerated firearms), § 7-2501(10) (defining "machine gun" to include "any firearm which shoots, is designed to shoot, or can be readily converted or restored to shoot: Automatically, more than 1 shot by a single function of the trigger [or] Semiautomatically, more than 12 shots without manual reloading"). In particular, the Act's definition of "machine gun" encompasses a wide array of semiautomatic firearms that are not normally considered "machine guns" and differs from the far narrower definition of the term under federal law. *See* 26